

ILLINOIS POLLUTION CONTROL BOARD

June 18, 2009

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 09-41
	)	(IEPA No. 65-09-AC)
MARK A. LEWIS,	)	(Administrative Citation)
	)	
Respondent.	)	

ORDER OF THE BOARD (by G.T. Girard):

On May 6, 2009, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Mark A. Lewis. *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Mr. Lewis’s residential property located at 1835 Bunnyville Drive in Clay City, Clay County, designated with Site Code No. 0258025002, and commonly known to the Agency as the “Clay City/Lewis, Mark A” site. For the reasons below, the Board accepts Mr. Lewis’s petition to contest the administrative citation as timely filed, but directs Mr. Lewis to file an amended petition to cure two deficiencies.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), an administrative citation is an expedited enforcement action brought before the Board seeking civil penalties that are fixed by statute. Administrative citations may be filed only by the Agency or, if the Agency has delegated the authority, by a unit of local government, and only for limited types of alleged violations at sanitary landfills or unpermitted open dumps. *See* 415 ILCS 5/3.305, 3.445, 21(o), (p), 31.1(c), 42(b)(4), (4-5) (2006); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that Mr. Lewis violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2006)) by causing or allowing the open dumping of waste in a manner resulting in litter at his Clay County site. The Agency further alleges that this violation is Mr. Lewis’s second or subsequent violation of Section 21(p)(1) and therefore asks the Board to impose a \$3,000 civil penalty on Mr. Lewis.

As required, the Agency served the administrative citation on Mr. Lewis within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2006); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by June 5, 2009. On June 8, 2009, the Board received Mr. Lewis’s petition to contest the administrative citation (Pet.). The petition is considered timely filed because it was postmarked on or before the filing deadline. *See* 35 Ill. Adm. Code 101.300(b)(2) (“mailbox rule”). In the petition, Mr. Lewis states, among other things, that he is using or plans to use most of the vehicles that were photographed during the Agency’s April 1, 2009 site inspection of his property. Pet. at 1-2.

The Board finds that there are two deficiencies with Mr. Lewis's petition that must be remedied before the Board can accept this case for hearing. First, contrary to the Board's procedural rules, Mr. Lewis fails to allege any grounds for contesting the administrative citation. *See* 35 Ill. Adm. Code 108.206. Second, there is no indication that Mr. Lewis served a copy of the petition upon the Agency. Under the Board's procedural rules, Mr. Lewis must serve a copy of the petition upon the Agency and file proof of service with the Board. *See* 35 Ill. Adm. Code 101.304.

The Board directs Mr. Lewis to file an amended petition correcting these deficiencies. If Mr. Lewis fails to file an amended petition by July 6, 2009, the Board will dismiss the petition and enter a default order against Mr. Lewis, imposing the \$3,000 penalty.

If Mr. Lewis proceeds to contest the administrative citation but does not prevail on the merits of the case, Mr. Lewis will have to pay not only the \$3,000 penalty but also any hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2006); 35 Ill. Adm. Code 108.500. A schedule of the Board's hearing costs is available from the Clerk of the Board and on the Board's website at [www.ipcb.state.il.us](http://www.ipcb.state.il.us). *See* 35 Ill. Adm. Code 108.504.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 18, 2009, by a vote of 5-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board